IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Appeal From Order St No.l225 of 2006
with
Civil Appln No.67 of 2006

Mukesh Amarchand Sheth ...appellant
vs
Mum Corpn of Gr Mumbai and ors.. respondents

Mr R.V.Govilkar for appellants
Ms Geeta Joglekar for BMC

**CORAM; A.M.KHANWILKAR J.**

**DATED 24.2.2006**

**P.C.**

l. Heard learned counsel for the parties. Perused the relevant records. I find no reason to depart from the conclusion reached by the court below that from the materials on record it is evident that the portion which was ordered to be regularized is adjoining to the suit structure. In other words the suit structure was neither the structure referred to in notice under section 35l as issued nor part of the structure which has been tolerated and regularized on the basis of the representation dated l7.3.l987 submitted on behalf of the appellants through Architects.

. Mr. Govilkar, however, contends that during the

pendency of the notice of motion the trial court was pleased to appoint court commissioner to submit report and on the basis of the said report the trial court was convinced that the suit structure was the same structure which has already been regularized by the corporation and,therefore, permitted reconstruction of the said structure. Relying on that order, Mr Govilkar contends that the conclusion reached by the trial court while dismissing the notice of motion itself is totally inconsistent approach adopted by the court below.

. The argument appears to be attractive,however,I see no reason to depart from the conclusion reached by the court below in the impugned judgment. The court below has adverted to the plan submitted by the appellants through Architects on l7.3.l987. The plan clearly defines the structure which was required to be regularized and that portion has been shown shaded in red. The original plan and the letter as was submitted by the appellants to the corporation for regularization of the structure was produced before me. A perusal of the said plan itself shows that the structure which has been regularized extends only upto verandah abutting the hall. The suit structure however falls outside the said red shaded portion. In other correspondence

and section 35l notice the structure referred to is described as raised otla open to sky. Suffice it to observe that the area which is now described as raised otla open to sky in the plan submitted by the appellant to the corporation for regularisation of the structure on l7.3.l987 does not fall within the regularized structure and the action under the suit notice is in relation to that area. If it is so the finding reached by the lower court that the portion which was ordered to be regularized is adjoining to suit structure, is appropriate and there is no reason to disturb that finding. Viewed in this perspective this appeal is devoid of any substance and the same is dismissed. Civil Application also stands disposed of accordingly.